

7/14/98

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS:	Torch Energy Advisors Incorporated)	
	(herein "Torch"), Consolidation Coal Company)	
	(herein "CCC"), and Pocahontas Gas Partnership)	
	(herein "PGP") (Torch, CCC and PGP sometimes)	VGOB
	collectively referred to as "Applicants"))	91/12/17-0169-01
)	
)	
RELIEF SOUGHT:	Accountings, Disbursements from Escrow)	
	Account, and Amendment of Board's)	
	Pooling Order for Drilling Unit NELW9 in)	
	Docket No. VGOB 91/12/17-0169)	
	entered April 29, 1992, and recorded)	
	May 1, 1992, in Deed Book 390,)	
	Page 646 (herein "Pooling Order"); the)	
	Board's Supplemental Order Regarding)	
	Elections Entered in Docket No. VGOB)	
	91/12/17-0169 on July 11, 1996, and)	
	Recorded July 18, 1996 in Deed)	
	Book 451, Page 147 (herein "Supplemental)	
	Order") and the Board's Amended Supplemental)	
	Order recorded July 14, 1998 at Deed Book 478,)	
	Page 695 (herein "Amended Supplemental Order");)	
	all recordings being in the Office of the Circuit)	
	Court of Buchanan County, Virginia)	
)	
LEGAL)	
DESCRIPTION:	Drilling Unit Number NELW9 as Created)	
	by Board Order Effective as of November)	
	19, 1991, Docket No. VGOB)	
	91/11/19-0160 as amended by Board)	
	Orders in VGOB Docket No.)	
	93/06/22-0384 (herein "Subject Drilling)	
	Unit") in the Hurricane Magisterial District,)	
	Buchanan County, Virginia (herein)	
	"Subject Lands"))	

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on April 21, 1998, and as a result of action taken by the Board on that date, and as a result of the subsequent accountings filed by the Operator with the Board, the Board hereby enters this Order.
2. **Appearances:** Jill Harrison of the firm Penn Stuart appeared in behalf of the Applicants; Sandra B. Riggs, Assistant Attorney General was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code § 45.1-361.1 *et seq.*, the Board finds that it has jurisdiction over the establishment and maintenance of the escrow account established by the Board for the Subject Drilling Unit pursuant to the terms of the Pooling Order and the Supplemental Order (herein "Escrow Account") into which

the Unit Operator is required to deposit those funds specified in the escrow requirements of the Virginia Gas and Oil Act (herein "Act") found at Va. Code § 45.1-361.21.D., 45.1-361.22.A.2., 45.1-361.22.A.3, and 45.1-361.22.A.4. (herein "Escrowed Funds"). Further, the Board finds: (1) that it does not have jurisdiction to resolve conflicting claims of ownership to the Coalbed Methane Gas being produced by the Unit Operator from wells located on Subject Drilling Unit, (2) that it does not have jurisdiction to interpret voluntary agreements between the Gas owners/claimants and the Unit Operator or to abridge or contravene the provisions of such agreements, and (3) that pursuant to Va. Code § 45.1-361.22.A.5, it does have jurisdiction and authority to disburse funds from the Escrow Account provided there has first been either a legal determination of Applicants' entitlement with respect to the liquidated amount of the funds on deposit in the Escrow Account attributable or allocable to Applicants' interest therein or there is an agreement by all of the owners/claimants within the drilling unit as to the amount of their respective Entitlement to the Escrowed Funds. The Applicants have represented to the Board that they have given notice to all parties (hereafter sometimes "person(s)" whether referring to individuals, corporations, partnerships, associations, companies, businesses, trusts, joint ventures or other legal entities) entitled by Va. Code §§ 45.1-361.19 and 45.1-361.22 to notice of this application, i.e., those persons set forth in Exhibit E hereto (persons identified by the Operator in the Escrow Accounting as being owners/claimants whose interests in Subject Drilling Unit are subject to the escrow requirements of the Act and the Pooling Order (persons whose Entitlements have purportedly been placed by the Unit Operator into the Escrow Account and who, according to the Operator, are the claimants to the Escrowed Funds). The Board has caused notice of this hearing to be published as required by Va. Code § 45.1-361.19.B. Whereupon, the Board hereby finds that the notices given herein satisfy all statutory requirements, Board rule requirements and the minimum standards of state due process.

4. **Prior Proceedings:**

- 4.1 At the Board's hearing on January 21, 1992 in Docket No. VGOB 91/12/17-0169, the Board granted the relief sought by Pocahontas Gas Partnership (herein "Operator") and pooled the interests in the Subject Formations in the Subject Drilling Unit underlying the Subject Lands for the production of coalbed methane gas (herein collectively referred to as "Coalbed Methane Gas" or "Gas") from active gob areas of the pool defined as those strata correlative to the coal seams and the coal seams below the Tiller Seam, including the Lower Castle, Upper Seaboard, Greasy Creek, Middle Seaboard, Lower Seaboard, Upper Horsepen, Middle Horsepen, C, War Creek, Pocahontas No. 10, Lower Horsepen, Pocahontas No. 9, Pocahontas No. 8, Pocahontas No. 7 Pocahontas, No. 6 Pocahontas No. 5, Pocahontas, No. 4, Pocahontas No. 3, Pocahontas No. 2 and various unnamed coal seams or pools, and all zones in communication therewith and all productive extensions thereof (herein "Subject Formations") pursuant to Va. Code §§ 45.1-361.21 and 45.1-361.22, and the terms of the Pooling Order, and the Board named the PGP as the Operator. The Supplemental Order, which incorporated the Operator's Affidavit of Election, was entered by the Board *sua sponte* on July 11, 1996 to comply with the requirements of the Board's Regulation 4 VAC 26-160.70.C. by supplementing the Pooling Order to complete the record regarding elections and to identify to the Board those claimants whose interests were subject to the escrow requirements of Act and the Pooling Order.
- 4.2 In their application to the Board to withdraw those funds in the Escrow Account which Applicants claim are uniquely attributable to their mutually conflicting Gas interests in Tract 11, a 53-acre tract within Subject Drilling Unit (designated by the Operator as Tract 38), the Applicants warranted and represented to the Board that:
 - a. Hugh MacRae Land Trust (herein "Trust") as the coal fee owner, Consolidation Coal Company (herein "CCC") as the coal leasehold owner as to all coal below drainage and as the oil and gas fee owner, Permac, Inc. as the coal leasehold owner as to all coal above drainage, and PGP as the coalbed methane leasehold owner were all of the potential claimants to the Gas produced from a 53-acre tract within Subject Drilling Unit known and designated by Applicants as Tract 11 and designated by the Operator as Tract 38 (herein "Tract 38").
 - b. That Tract 38 represents a 32.89882 percent interest within Subject Drilling Unit.

- c. By Assignment and Bill of Sale dated as of December 29, 1997 (herein "Assignment"), effective September 4, 1991 Trust assigned to Torch (1) "the Gas Lease Royalty insofar as it relates to the production of Methane from the Conflict Property and the Non-Conflict Property and any gas royalty rights with respect to Methane that arise by operation of law or otherwise in all properties and lands pooled, unitized, communitized or consolidated with such properties (the "Royalty Interest")" and (2) "the royalties which have been held in escrow by Premier Bank as Escrow Agent and the royalty held by PGP and CCC pending the resolution of the conflicting claims to the Gas Lease Royalty, other than royalties that have been released or will be released pursuant to the term of the Garden Realty Settlement Agreement (the "Escrowed Funds")".
- d. By its Assignment, Trust assigned to Torch its interest in the Escrowed Funds attributable to Tract 38.
- e. Subsequent to the Assignment, Torch, CCC and PGP became the sole claimants to the Escrowed Funds uniquely attributable to Tract 38, and
- f. Trust, Torch and CCC by agreement dated December 30, 1997 (herein "CCC Settlement Agreement") agreed that the portion of the Escrowed Funds uniquely attributable to their interests in Tracts 38, once determined, were to be paid as follows: a sum equal to fifty percent (50%) to CCC and a sum equal to fifty percent (50%) to Torch.
- g. Trust, Torch and PGP by agreement dated December 30, 1997 (herein "PGP Settlement Agreement") agreed that the portion of the Escrowed Funds uniquely attributable to their interests in Tract 38, once determined, were to be paid as follows: a sum equal to fifty percent (50%) to CCC and a sum equal to fifty percent (50%) to Torch.

4.3 Through the application filed herein, the Applicants seek a partial disbursement of funds from the Escrow Account. A review of the Pooling Order, Supplemental Order, and Amended Supplemental Order reveals that the Applicants have purportedly entered into voluntary agreements with the Operator with respect to their interests in Subject Drilling Unit and:

- a. The Operator's Affidavit of Election of March 18, 1996 which was attached to and made a part of the Supplemental Order indicates (1) that the only interest within Subject Drilling Unit subject to the escrow requirements of the Act and the Pooling Order was that set forth in Exhibit B-3 attached thereto, the interest of C. L. Ritter Lumber Company in a 0.60-acre tract and (2) that Applicants interest in Tract 38 were not subject to the escrow requirements of the Act or the Pooling Order..
- b. Notwithstanding the fact that the Supplemental Order did not indicate Operator's intention to escrow fund due Applicants pursuant to the terms of their voluntary agreements, testimony presented to the Board at its hearing of this matter revealed that the Operator had purportedly deposited funds attributable to Tract 38 in the Escrow Account; therefore, the Board instructed the Operator to file an amended Affidavit of Election to support an Amended Supplemental Order to properly reflect those interests in Subject Drilling Unit for which funds were actually being deposited by the Operator into the Escrow Account.
- c. In compliance with the Board's instructions, the Operator filed with the Board an amended Affidavit of Election of May 18, 1998 which was attached to and made a part of an Amended Supplemental Order. A copy of the Exhibit E to the amended Affidavit of Election entitled "List of Conflicting Owners/Claimants that require escrow" is attached hereto and made a part hereof (herein "Exhibit E"). According to Exhibit E Tracts 38 and 40 of Subject Drilling Unit have conflicting claims to the Gas and are subject to the Escrow Requirements of the Act and the Pooling Order, and proceeds from the production of Gas from Subject Drilling Unit allocable to said tracts at some undetermined time commenced being escrowed by the Operator in the Escrow Account

- 4.4 To comply with instructions given to the Operator by the Board at its hearing of this matter on April 21, 1998, by letter dated August 12, 1998 from Mark Swartz of the firm Swartz & Stump, the Operator forwarded to the Board an accounting entitled "Affidavit RE: Amended Supplemental Orders" (herein "Escrow Accounting") incorporating a schedule setting forth the total royalties the Operator represents it deposited into the Escrow Account allocated among two tracts within Subject Drilling Unit, i.e., Tracts 38 and 40 (herein "Escrow Accounting"). The Escrow Accounting indicates that for the period January 1992 to July 1998 the Operator deposited \$101,485.96 in the Escrow Account attributable to Tract 38. Additionally, the Escrow Accounting indicates that the claimants to said funds are Trust, CCC and Janet Weatherford (1/8 Royalty Interest).
- 4.5 By action taken by the Board on October 20, 1998 in VGOB Docket No. 97/04/15-0582 (Application of Hugh McRae Land Trust and Garden Realty Corporation to withdraw from the Escrow Account funds attributable or allocable to their conflicting but settled Gas ownership interests in Tract 40 of Subject Drilling Unit), the Board instructed the Escrow Agent (1) from records filed with it by the Operator and in cooperation with the Operator, to perform the work necessary to create subaccounts and to allocate the funds on deposit in the Escrow Account to the various tracts within Subject Drilling Unit for which funds have been escrowed by the Operator and (2) to report back to the Board its progress on November 17, 1998.
- 5 **Relief Requested:** Applicants requested that the Board (1) calculate the amount(s), in the aggregate, attributable to Tract 38 pursuant to the terms of Applicants' voluntary agreements with the Operator, (2) provide for an accounting of said sums by the Operator and by the Escrow Agent to the Applicants, (3) disburse all sums due the Applicants by virtue of their voluntary agreements and/or the Pooling Order, including applicable earnings, whether held by the Operator and/or the Escrow Agent, in the manner set forth in the Settlement Agreement, and (4) direct the Operator in the future to discontinue the payment of Applicants' entitlements attributable to their conflicting claims within Tract 38 into the Escrow Account, but rather to disburse such funds, including any applicable earnings, together with an accounting thereof, to Applicants in accordance with the CCC Settlement Agreement and/or the PGP Settlement Agreement.
- 6 **Special Findings:**
- 6.1. While the Supplemental Order did not identify Applicants' interest in Tract 38 as being subject to the Escrow Requirements of the Act or of the Pooling Order, the Operator's affidavit filed in support of the Amended Supplemental Order and the Operator's affidavit filed as part of the Escrow Accounting reflects that the Operator is depositing funds into the Escrow Account for Tracts 38 and 40. The Board is unable to determine from the evidence presented when the Operator commenced depositing funds attributable to Tracts 38 and 40 into the Escrow Account, or the period of time during which said funds have been on deposit in the Escrow Account.
- 6.2. The Escrow Accounting filed with the Board by the Operator in August 1998 reflects that Tract 38 is coded 9100062-3A and that the Operator has deposited into the Escrow Account the sum of \$101,485.96 for said Tract (herein "Principal").
- 6.3. Through the testimony, the application filed herein, and the Escrow Accounting the Applicants and/or the Operator have represented to the Board that: (1) the sole claimants to the Escrowed Funds attributable to Tract 38 are Trust/Torch, CCC, Janet Weatherford (1/8 royalty interest), and/or PGP and (2) that Trust, Torch and CCC entered into the CCC Settlement Agreement effective December 30, 1997 which authorizes fifty percent (50%) of the Escrowed Funds attributable to their aggregate interest be paid to CCC and fifty percent (50%) be paid to Torch, and (3) that Trust, Torch and PGP have entered into the PGP Settlement Agreement which authorizes fifty percent (50%) of the Escrowed Funds attributable to their aggregate interest be paid to PGP and fifty percent (50%) to be paid to Torch. Exhibit L to the Escrow Accounting indicates that while a portion of the deposits into the Escrow Account attributable to Tract 38 may

be disbursed, a portion of same is to be held in escrow, presumably that attributable to the claims of Janet Weatherford.

- 6.4. The Pooling Order, the Supplemental Order, the Amended Supplemental Order, and the Board's contract with the Escrow Agent directed and authorized the Escrow Agent to set up one escrow account for the Subject Drilling Unit and to receive from the Operator for deposit into that account proceeds subject to the Escrow Requirements of the Act and the Pooling Order. Funds within the NELW9 Drilling Unit Escrow Account are not segregated by tract within the drilling unit, nor is interest accrued or fees assessed on a tract-by-tract basis.
- 6.5. Va. Code § 45.1-361.22.A.5. provides that *"The Board shall order payment of principal and accrued interest from the escrow account to all persons legally entitled thereto pursuant to the provisions of § 45.1-361.21 and the order of the Board. Such order shall be issued within thirty days of receipt of notification of the final legal determination of entitlement thereto or upon agreement of all claimants."* Neither the Act or the regulations promulgated pursuant thereto define the term "entitlement"; therefore, the Board in applying its common meaning as set forth in Black's Law Dictionary (right or benefits, income or property, which may not be abridged without due process), the Board defines the term "entitlement" as used in Va. Code § 45.1-361.22.A.5. to mean *"the liquidated dollar amount of that portion of the Escrowed Funds which is uniquely attributable to each Gas Owner's interest in Subject Drilling Unit to be comprised of the Principal deposited by the Operator into the Escrow Account, plus interest accruing on the Principal for the period of time said Principal was on deposit in the Escrow Account (herein "Interest"), less the fees charged by the Escrow Agent to the Escrow Account allocable to Applicants' interests in Subject Drilling Unit (herein "Fees") (herein Principal, plus Interests less Fees is collectively referred to as "Entitlement")."*
- 6.6. In determining whether or not Applicants have established their Entitlement in the Escrowed Funds, the board finds that: (1) with respect to the application herein, there has been no final legal determination of Applicants' entitlement to the Escrowed Funds, (2) all of the persons identified by the Operator as having or claiming Gas interests within Tract 38 have not resolved their conflicting claims or agreed to their respective Entitlement, and (3) that while with respect to Tracts 38, Trust/Torch and CCC and Trust/Torch and PGP have resolved their conflicting claims, they do not represent all of the claimants within Tract 38.

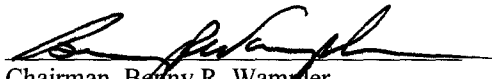
7. **Relief Granted:** Therefore:

- 7.1 Applicants' request for an accounting is granted and is hereby deemed satisfied by the Escrow Accounting, a copy of which was heretofore provided to the Applicants.
- 7.2 The Escrow Agent is directed to: (1) review all records filed with it by the Operator, or to meet with the Operator to obtain such records as are necessary to perform the work required to create subaccounts within the Escrow Account by tracing and posting on a tract-by-tract basis the funds on deposit in the Escrow Account (including Principal and the allocation of Interest and Fees) to the various tracts referred to in Paragraph 4.3 above, (2) reconcile the results of its work to the Escrow Accounting, and (3) to report back to the Board on November 17, 1998 with respect to its progress pertaining thereto and/or results thereof.
- 7.3 For the reasons set forth in Paragraph 6 above, Applicants' request for disbursement of funds from the Escrow Account is continued to allow for the presentation to the Board of the information required by Paragraph 7.2, and to: (1) allow Applicants to reconcile the differences in the information provided in the Operator's application for the Pooling Order and the Application filed herein to that provided by the Escrow Accounting with respect to the identity of the claimants in Tract 38 and their various agreements resolving all conflicting claims within said tract, (2) give notice to the Applicants of the

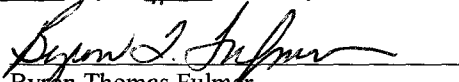
Escrow Agent's recap of the deposits it received for deposit into the Escrow Account on a tract-by-tract basis, and (3) to allow Applicants an opportunity to review the Escrow Agent's recap and to notify the Board whether or not all those having or claiming Gas interests within Tract 38 have reached an agreement with respect to their respective Entitlement to those funds on deposit in the Escrow Account which are attributable to Tract 38, and if so, the amount of each such claim of Entitlement.

8. **Conclusion:** Therefore, the relief granted is just and reasonable, is supported by substantial evidence, and the Board is entering this Order granting the relief requested as more particularly set forth in Paragraph 7 above and IT IS SO ORDERED.
9. **Effective Date:** This Order shall be effective as of the date of its execution.

DONE AND EXECUTED this 3rd day of November, 1998, by a majority of the Virginia Gas and Oil Board.

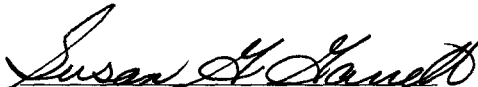

Chairman, Benny R. Wampler

DONE AND PERFORMED this 5th day of November, 1998, by Order of this Board.


Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)

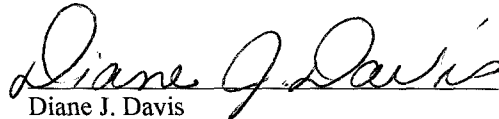
Acknowledged on this 3rd day of November, 1998, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My commission expires July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 5th day of November, 1998, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Diane J. Davis
Notary Public

My commission expires September 30, 2001

UNIT NELWS
Docket # VGOB-91-1217-169-000X
Exhibit E

478 PAGE 699
EXHIBIT

List of Conflicting Owners/Claimants that require escrow

	Net Acres in Unit	Interest in Unit
<u>Tract #38 - 53.00 Acre Tract</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Hugh MacRae Land Trust P. O. Box 29 Tazewell, VA 24651	53.00 acres	32.69882%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Consolidation Coal Company P. O. Box 947 Bluefield, VA 24605	49.79 acres	30.90834%
(1) Janet Weatherford (1/8 Royalty Interest) P. O. Box 22483 Alexandria, VA 22304	3.2067 acres 1/3 of 9.62 acres	1.99048%

Tract #40 - 87.50 Acre Tract

COAL FEE OWNERSHIP

(1) Hugh MacRae Land Trust P. O. Box 29 Tazewell, VA 24651	87.50 acres	54.31409%
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OIL & GAS FEE OWNERSHIP

(1) Garden Realty Corporation c/o Betty Boyd King 2370 Lyndhurst Avenue Winston-Salem NC 27103	87.50 acres	54.31409%
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VIRGINIA: In the Clerk's Office of the Circuit Court of Buchanan County, The foregoing instrument was this day presented in the office aforesaid and is together with the certificate of acknowledgment annexed, admitted to record this 10th day of July 1998, Book No. 718 and Page No. 698. Returned this date to: *Alan Davis*

TESTE: *James M. Bevens, Jr.* Clerk
TESTE: *James M. Bevens, Jr.* Deputy Clerk

Exhibit EE
UNIT NELW-9
Docket # VGOB-91-1217-0169-01
List of Conflicting Owners/Claimants with Royalty Split Agreements

	Net Acres in Unit	Percent of Unit
<u>Tract #38, 53.00 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Hugh MacRae Land Trust c/o Akin, Gump, et al. 590 Madison Avenue, 20th Floor New York, NY 10022	49.79 acres	30.90832%
<u>OIL & GAS FEE OWNERSHIP</u>		
Consolidation Coal Company et al.	49.79 acres	
(1) Consolidation Coal Company P.O. Box 947 Bluefield, VA 24605	44.11 acres	27.37827%
(2) Pocahontas Gas Partnership P.O. Box 947 Bluefield, VA 24605	5.69 acres	3.53004%
<u>Tract #40, 87.50 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Hugh MacRae Land Trust c/o Akin, Gump, et al. 590 Madison Avenue, 20th Floor New York, NY 10022	87.50 acres	54.31409%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Garden Realty Corporation c/o Betty Boyd King 2370 Lyndhurst Avenue Winston-Salem, NC 27103	87.50 acres	54.31409%

Exhibit E
UNIT NELW-9
Docket # VGOB-91-1217-0169-01
List of Conflicting Owners/Claimants that require escrow

	Net Acres in Unit	Percent of Unit
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<u>Tract #38, 53.00 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Hugh MacRae Land Trust c/o Akin, Gump, et al. 590 Madison Avenue, 20th Floor New York, NY 10022	3.2067 acres	1.99050%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Janet Weatherford (1/8 Royalty Interest) P.O. Box 22483 Alexandria, VA 22304	3.2067 acres 1/3 of 9.62 acres	1.99050%